IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of Case

Appeal from Order No. 459 of 2006

Date of decision :- 7th August, 2006

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date :- Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTRANCHAL AT NAINITAL

Appeal from Order 459 of 2006

1. Sri Ali Raza s/o Sri Maula Baksh
2. Km.Rabia, Sister of Late Sri Sabir Saifi,
r/o near Bari Masjid, Indira Nagar,
Haldwani , Distt. Nainital. ..... Appellants

Versus

1. Sri Bishan Singh Aithani
S/o Sri Mangal Singh Aithani,
R/o Village Sufi Bhagwanpur,
P.O. Motahaldu, Haldwani,
District Nainital.
2. The National Insurance Co. Ltd.
Through its Divisional Manager,
Divisional Office, Nainital Road,
Haldwani, Distt. Nainital ..... Respondents

.....

Sri Zaffar Ullah Siddique, Advocate for the appellants.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

RAJEEV GUPTA, C.J. (Oral)

Sri Zaffar Ullah Siddique, Advocate for the appellants is heard on admission.

2. This is claimants' appeal for enhancement of the compensation awarded by the Motor Accident Claims Tribunal/Additional District Judge, Haldwani vide Award dated 10.05.2006 passed in Motor Accident Claim Case No. 172 of 2005, whereby a sum of Rs. 2,66,000/- (Rupees Two Lakhs Sixty Six Thousand only) has been awarded as compensation to the claimants.

3. Claimants Ali Raza and Km. Rabia, who are father and sister of deceased Sabir Saifi, respectively claimed compensation of Rs.11,52,600/- for his death in the motor accident on 16.09.2005, when he was dashed by the offending vehicle – Jeep bearing registration no. UP-02C / 7016 resulting in serious injuries to Sabir Saifi who later succumbed to those injuries. The claimants pleaded that deceased Sabir Saifi was aged about

25 years and was earning Rs. 5400/- per month working as a mechanic in Amit Automobiles, Haldwani.

4. The owner and insurer of the offending vehicle – Jeep contested the claim. The owner denied his liability to pay compensation the claimants on the plea that the accident occurred on account of the negligence of the motor-cyclist, whereas the insurer of the jeep denied its liability to pay compensation on the plea that the jeep was being plied in breach of the policy conditions and the driver of the jeep was not holding a valid driving license.

5. The tribunal, on the evidence led by the parties, held that deceased Sabir Saifi sustained injuries in the motor accident on 16.09.2005; the accident occurred due to rash and negligent driving of the driver of the offending vehicle – Jeep; and the insurer of the jeep was liable to pay compensation to the claimants.

6. As the evidence led by the claimants about the income of the deceased was not found reliable, the Tribunal assessed the income of the deceased at Rs. 3000/- per month and Rs. 36,000/- per annum. By deducting 1/3rd of the said amount as personal expenses of the deceased, the claimants' dependency was assessed at Rs. 24,000/- per annum. By multiplying the amount of annual dependency (Rs. 24,000/-) by the multiplier of 11, the compensation was worked out to Rs. 2,64,000/-. The Tribunal further awarded Rs. 2000/- towards funeral expenses. Thus total sum of Rs. 2,66,000/-(Rupees Two Lakhs Sixty Six Thousand only) was awarded as compensation to the claimants for the death of Sabir Saifi in the motor accident.

7. The Tribunal further directed the Insurance Company to pay interest @ 9% per annum in the event of non-payment of the amount of compensation within a period of one month from the date of the Award.

8. Sri Zaffar Ullah Siddique, the learned counsel for the appellants vehemently argued that the Tribunal has erred in not accepting the

claimants' evidence about the income of the deceased and in directing conditional payment of interest on the amount of compensation.

9. Though the claimants in the claim petition pleaded that deceased Sabir Saifi used to earn Rs. 5400/- per month, their witness P.W.3 Amit Sahani, who was the owner of the Workshop wherein the deceased was stated to be working as a mechanic, stated in his evidence that deceased was being paid Rs. 5000/- per month. The claimants also adduced in evidence salary certificate issued by P.W.3 Amit Sahani. The Tribunal found that the evidence of P . W. 3 – Amit Sahani was not supported by Salary Register / Attendance Register of the Workshop. In this view of the matter, the Tribunal found it proper to assess the income of the deceased at Rs.3000/- per month and Rs. 36,000/- per annum on its own estimate. In this state of evidence, we do not find any infirmity in the assessment of the income of the deceased by the Tribunal at Rs.3000/-per month and Rs. 36,000/- per annum.

10. That apart, in a motor accident case what is important is that the amount awarded as compensation, should be just and proper in the facts and circumstances of a given case.

11. Even assuming the income of the deceased at Rs. 5000/- per month and 60,000/- per annum as stated by P.W.3 Amit Sahani, dependency of the claimants, in the facts and circumstances of the present case, could not have been assessed at more than Rs. 24,000/- per annum. It is so because deceased Sabir Saifi, who was aged about 25 years, was unmarried on the date of the accident and would have got married soon. After his marriage, his contribution towards the family would have been reduced substantially and he would not have been in a position to contribute towards his father and sister more than Rs. 24,000/- per annum. The multiplier of 11 selected by the Tribunal is rather on the higher side in view of the dictum of the Apex Court in the case of Municipal Corporation of Greater Bombay Vs. Laxman Iyer and another reported in (2003) 8 SCC 731 wherein it has been held that in a case where the claimants are parents, the multiplier of 10 is appropriate. By multiplying the annual dependency of Rs. 24,000/- with

the multiplier of 10 the compensation would have been Rs. 2,40,000/- only. As against this, the Tribunal has assessed the compensation at Rs. 264,000/- and has awarded further sum of Rs. 2000/- towards funeral expenses taking the total compensation to Rs. 2,66,000/-.

12. Thus, seen from any angle the compensation of Rs. 2,66,000/- awarded by the Tribunal cannot be termed as ‘inadequate’ so as to warrant enhancement in this appeal filed by the claimants under Section 173 of the Motor Vehicles Act.

13. The submission of the learned counsel for the appellant in regard to the conditional payment of interest also deserves an out-right rejection as the Tribunal has decided the claim petition within a period of eight months of the accident.

14. As we do not find any scope for enhancement of the compensation either on account of the income of the deceased or dependency of the claimants as assessed by the Tribunal or the multiplier selected, the appeal fails and is hereby dismissed summarily.

(J.C..S. Rawat, J.) **(Rajeev Gupta, C. J.)**
07.08.2006 07.08.2006

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